

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Process Reform for Executive Branch Review	)	IB Docket No. 16-155
of Certain FCC Applications and Petitions	)	
Involving Foreign Ownership	)	

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP.**

U.S. TelePacific Corp. ("TelePacific") supports efforts by the Federal Communications Commission ("FCC") to bring clarity, efficiency and transparency to the Team Telecom Review Process ("Review Process"). What was intended to be a narrow process that focused on transactions that could present national security, law enforcement, trade policy or foreign policy concerns, now indiscriminately subjects all applications with any level of reportable foreign ownership to the Review Process. This expansion in referrals causes unnecessary delays for certain entities and economic and administrative uncertainty for all. As Hogan Lovells reports, the average clearance period in Team Telecom now extends to 250 days.<sup>1</sup>

This proceeding can demystify an opaque and confusing Review Process. The FCC can achieve its goals by adopting three proposals made by Commenters. First, the FCC should reduce the number of applications it refers to the Review Process. Specifically, applications should be categorically exempted from the Review Process when the foreign

---

<sup>1</sup> *In the Matter of Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, NPRM, IB Docket No. 16-155, FCC 16-79 (June 24, 2016).

ownership was previously reviewed by Team Telecom and there has been no material change in its ownership structure or those changes fall within authorized limits.<sup>2</sup>

Next, the FCC should establish firm timeframes in which the Review Process should be completed. It could model its deadlines on those implemented by the Committee on Foreign Investment in the United States (CFIUS).<sup>3</sup> Finally, the FCC should narrow its use of certifications so that the Review Process cannot be used to impose legal and other statutory requirements on carriers or entities that are not otherwise subject to those requirements. The certification process must be narrowly tailored and rest on firm statutory grounds.

## **I. OVERVIEW**

There is universal agreement that the Review Process requires reform. Comments reveal a parade of communications providers who have struggled to navigate the Review Process as they try to expand their business in the United States. T-Mobile captures the frustrations of the majority of commenters: “The existing Team Telecom process is often extremely lengthy, totally opaque and unduly burdensome on applicants.”<sup>4</sup> BT Americas describes a process that sounds like the regulatory equivalent of a cosmic Black Hole: “Once transaction applications are submitted, there is little to no information available to the Commission, much less to applicants, on status or potential areas of concern, and ways to discern which agency, if any has concerns.”<sup>5</sup>

---

<sup>2</sup> Comments of Telecom Companies, IB Docket No. 16-155, at 10 (filed Aug. 18, 2016) (“Telecom Companies”).

<sup>3</sup> Comments of Level 3 Communications, Inc. IB Docket No. 16-155, at 4 (filed Aug. 18, 2016) (“Level 3”).

<sup>4</sup> Comments of T-Mobile, IB Docket No. 16-155, at 2 (filed Aug. 18, 2016) (“T-Mobile”).

<sup>5</sup> Comments of BT Americas Inc., Deutsche Telekom, Inc., Orange Business Services U.S., Inc., and Telefonica Internacional USA, IB Docket No. 16-155, at 4 (filed Aug. 18, 2016) (“BT Americas”).

Even institutions that provide capital for communications companies to pursue these transactions, but which do not frequently file comments in regulatory proceedings, were compelled to comment. “The complexity and lack of transparency that currently surrounds Team Telecom Review Process hinders investment activity in the United States telecommunications and media sectors. It puts the US at odds with other modern economies. Most trading partners have eliminated foreign ownership restrictions altogether, and few (if any) require detailed analysis of its 5% or 10% direct or indirect” investment.<sup>6</sup>

Over the years, TelePacific has undergone numerous Team Telecom reviews as part of its acquisition of U.S.-based carriers. TelePacific provides competitive telecommunications services to business customers in Nevada and California. It is affiliated with the following competitive carriers: Mpower Communications Corp, providing services in Nevada and California; Arrival Communications, Inc. providing service in California, and TelePacific Communications Co. f/k/a Tel West Network Services Corporation, providing services in Texas.

On March 15, 2016, TelePacific and DSCI Holdings Corporation and DSCI LLC filed applications pursuant to Section 214 of the Communications Act and the appropriate FCC rules requesting approval for the transfer of control of DSCI LLC to TelePacific.<sup>7</sup> At the request of the U.S. Department of Justice, the U.S. Department of Defense and the U.S. Department of Homeland Security asked the FCC to remove the application from streamlined status so that the departments could complete their review of “any national,

---

<sup>6</sup> Comments of Financial Sponsors, IB Docket No. 16-155, at 13 (filed Aug. 18, 2016) (“Financial Sponsors”).

<sup>7</sup> *Domestic Section 214 Application Filed for the Transfer of Control of DSCI, LLC to U.S. TelePacific Corp.*, Federal Communications Commission, WC Docket No. 16-67. DA 16-277 (rel. March 15, 2016).

law enforcement and public safety issues.”<sup>8</sup> As of the date of this filing, Team Telecom has not granted final clearance although it is expected soon.

## **II. THE FCC SHOULD REDUCE THE NUMBER OF TRANSACTIONS REFERRED TO TEAM TELECOM**

The FCC’s first step should be to limit the types of applications and petitions referred to Team Telecom. The Review Process should focus on those applications that raise true national security, law enforcement, trade policy and foreign policy concerns.<sup>9</sup> This simple step will reduce the work load for Team Telecom and allow faster, more focused and efficient reviews.

TelePacific concurs that the Review Process can be duplicative and unnecessary in instances where the foreign ownership structure has already been approved by Team Telecom and any subsequent changes are not material or fall within authorized limits. TelePacific agrees with BT Americas that referral should not be required when:

- a. There has been no material change in the foreign ownership structure of the applicant and that structure was previously reviewed by Team Telecom without objections;
- b. The applicant is subject to an NSA or LOA; or
- c. The transaction is non-substantive and *pro forma*.

As BT Americas explains, “[o]nce comprehensive review has been completed, it would be a significant waste of time and valuable resources – of both Team Telecom agencies, the FCC and applicant – to undertake the same review again in subsequent applications where there has been no material change in foreign ownership.”<sup>10</sup> Verizon also concurs that the

---

<sup>8</sup> Notice of Removal of Domestic 214 Application Filed for the Transfer of Control of DSCI, LLC to the U.S. TelePacific Corp., Federal Communications Commission, WC Docket No. 16-67, Public Notice DA 16-277 (rel. April 5, 2016)

<sup>9</sup> Telecom Companies Comments at 2

<sup>10</sup> BT Americas Comments at 9

commission can exclude from review those transactions where the applicant has an “existing declaratory ruling” authorizing their foreign ownership or an agreement with the Executive Branch. Verizon includes LOAs and NSAs as “agreements” with the Executive Branch.<sup>11</sup>

### **III. THE REVIEW PROCESS NEEDS GREATER TRANSPARENCY AND FIRM TIME FRAMES TO ENSURE APPLICATIONS ARE COMPLETED IN AN EQUITABLE PERIOD.**

Greater transparency is needed in the Review Process. The FCC should establish firm deadlines for Team Telecom to not only complete review, but to provide applicants status updates. TelePacific recommends that the FCC establish guidelines similar to those already in place under the CFIUS process which provides for an initial 30-day review period with a single 45-day extension. The disparity in the CFIUS and Team Telecom Process is stark. Hogan Lovells points out that for transactions that undergo both CFIUS and the Team Telecom review, the CFIUS portion concludes within 75 days while Team Telecom review averages 250 days.<sup>12</sup>

Level 3 suggests that Team Telecom be required to complete its review within 90 days. Team Telecom would have to request an extension not more than 10 days before the end of the initial 90-day period and would have to bear the burden of justifying the delay. Level 3 argues that extensions should be rarely granted. Level 3 contends that “[g]iven the comparable nature of transactions reviewed by CFIUS and Team Telecom and the efficiency

---

<sup>11</sup> Comments of Verizon, IB Docket No. 16-155, at 3 (filed Aug. 18, 2016) (“Verizon”).

<sup>12</sup> Comments of Hogan Lovells, IB Docket No. 16-155, at 7 (filed Aug. 18, 2016) (“Hogan Lovells”).

with which CFIUS is able to complete its review process, a 90-day review period is sufficient to complete Team Telecom review,"<sup>13</sup>

Regardless of the time frame the FCC selects, it will be important that the guidelines limit the ability of Team Telecom to stretch out the Review Process for indeterminate periods. The FCC must make sure that the exceptions don't swallow the rules or the benefits of reform will be lost.

#### **IV. CERTIFICATION REQUIREMENTS MUST BE NARROWLY TAILORED**

Commenters raise significant and serious concerns over the potential misuse of certifications as part of the application process. TelePacific agrees with T-Mobile that certifications must be narrowly tailored, must be designed to advance the processing of the application, and must not impose new obligations outside the law.<sup>14</sup> Certifications should not be used to restate existing legal obligations or to impose statutory obligations where they do not exist. As Level 3 warns, the proposed certifications with respect to CALEA could end up extending those obligations to entities not covered by the statute.<sup>15</sup>

The Telecom Companies point out that several of the proposed certifications impose obligations that are inconsistent with existing legal requirements and should not be required of any applicants, including those with foreign ownership.<sup>16</sup> BT Americas points out that the certifications can be read to require the adoption of data localization obligations that go beyond existing legal requirements and are contrary to US commerce and trade policy.<sup>17</sup>

---

<sup>13</sup> Level 3 Comments at 4.

<sup>14</sup> T-Mobile Comments at 3

<sup>15</sup> Level 3 Comments at 15.

<sup>16</sup> Telecom Companies Comments at 17

<sup>17</sup> BT Americas Comments at 3.

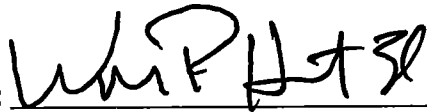
## V. CONCLUSION

The Team Telecom Review Process demands reform. The communications providers impacted by those requirements have offered thoughtful, pragmatic solutions to improve the efficiency of the process and speed review while at the same time preserving an opportunity for the government to consider national security and other statutory obligations.

The first step is to reduce the number of transactions referred to Team Telecom by adopting the common sense proposals highlighted by TelePacific and others. The second step is to inject transparency into the process by adopting clear timeframes for Team Telecom to complete their reviews. It is important that the rules include criteria under which extensions may be granted, otherwise the exceptions will continue to swallow the rule. Finally, certifications must be narrowly tailored and based on firm legal ground and they must be relevant to the application. The certification process should not be used to impose unique legal obligations on the latest carrier to go through the Review Process.

Respectfully Submitted,

U.S. TelePacific Corp.

By: 

William P. Hunt III

Vice President, Assistant General Counsel  
and Assistant Secretary

U.S. TelePacific Corp.

10333 East Dry Creek Road  
Englewood, CO 80112  
(303) 268.5420

and

Nancy Lubamerksy  
VP Public Policy and Strategic Initiatives  
U.S. TelePacific Corp.  
505 Flowers Street, Suite 4700  
Los Angeles, CA 90071  
(510) 995.5602